Options for Farmers Dealing with Financial Difficulties

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Factsheet

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INTRODUCTION

Farming, like any other business, involves financial risk. Even the best-managed business can experience financial difficulties when market prices decline, part of the farm business fails to generate the expected profits, or financing arrangements are inadequate.

This Factsheet is aimed at helping farm business owners make decisions about the future direction of their business. It outlines some options farm businesses experiencing financial difficulties can choose as well as what farm business advisory services are available.

Making decisions and actively managing your circumstances are important steps in managing the stress created by financial difficulty. This reduces uncertainty and provides some sense of control for the family in difficulty. While this Factsheet is primarily focused on the farm business, it cannot be emphasized enough that family and personal issues are equally important and must be addressed.

SECTION 1: MANAGING STRESS

Financial difficulty can produce high levels of stress. Farmers who find themselves in this situation can feel hopeless and experience a range of emotions and physical symptoms such as fatigue, anger, withdrawal or depression. It is important to recognise these symptoms as signs of stress. The OMAFRA Factsheet *Identifying and Managing Stress: A Business Owners Guide* (Order No. 07-067) provides some helpful ways to handle stress.

Sometimes it helps to talk about your difficulties. The Farm Line provides confidential peer-to-peer emotional support and referrals to other services that farmers and farm families may need. The Farm Line phone number is 1-888-451-2903.

SECTION 2: TAPPING INTO SOURCES OF CASH FLOW

It is important to explore all potential financial resources. A checklist of potential cash flow sources for farmers follows.

GOVERNMENT BUSINESS RISK MANAGEMENT PROGRAMS

- **AgriStability** – producers experiencing severe financial pressure should submit their applications as soon as possible after year-end and contact Agricorp to have their current year application placed in priority. Contact Agricorp at 1-877-838-5144 or www.agricorp.com.

- **AgriStabilty Interim Payment** – provides a 50 per cent advance payment prior to year-end when it is likely that a claim will be payable for the year. Contact Agricorp at 1-877-838-5144 or www.agricorp.com.

- **AgriInvest** – replaces the coverage for margin declines of less than 15 per cent previously covered by the Canadian Agricultural Income Stabilization (CAIS) program. Money deposited into an AgriInvest account (based on 1.5 per cent of allowable net sales) is matched by the federal and provincial governments. Contact AgriInvest Administration at 1-866-367-8506.

- Ontario Risk Management Program – is a three-year price support pilot program designed to help Ontario grains and oilseeds producers offset losses caused by low commodity prices. Farm fed crops are eligible. Contact Agricorp at 1-888-247-4999 or www.agricorp.com.

- **Self-Directed Risk Management Program** – The SDRM program is a federally and provincially funded risk management program available to Ontario horticulture producers who participated in the CAIS program for the 2006 and 2007 stabilization years. Contact Agricorp at 1-877-838-5144 or www.agricorp.com.

- **Production Insurance** – Production insurance provides production risk protection to producers by minimizing the economic effects of crop losses caused by natural hazards. Producers should consider if they have experienced any crop losses and contact Agricorp at 1-888-247-4999 on the timing on potential payments.

LOAN PROGRAMS

- **Advance Payments Program for Livestock** – Cattle, hog, lamb and market sheep producers can now benefit from the Advance Payments Program that features up to $100,000 in interest-free loans. Producers may also qualify under the same program for an additional $300,000 (at prime minus 1/4%). Calculations are based on the current animal stock.

- **Emergency Advance** – Cattle and hog producers can also access an emergency advance. This is based on the expected number of animals to be produced over a 12-month period. Priority agreements with banks, credit unions or other creditors are not required. Contact ACC Farmers Financial at 1-888-278-8807 or www.accfarmersfinancial.ca.

- **Advance Payments Program for Fresh Market Vegetables** – The Advance Payments Program for Fresh Market Vegetables provides producers with access up to $400,000 of input financing with the first $100,000 interest-free and next $300,000 at prime -1/4%. The deadline for application is August 1st, 2008. Contact ACC Farmers Financial at 1-888-278-8807 or www.accfarmersfinancial.ca.

- **Advance Payments Program for Crops** – Producers can access up to $400,000 of input financing with the first $100,000 interest-free and next $300,000 (at prime minus 1/4%). Up to 18 months of financing is available if used with Advance Payments Program for Crops in Storage. Amount of financing is related to Production Insurance or AgriStability Program coverage. Contact ACC Farmers Financial at 1-888-278-8807 or www.accfarmersfinancial.ca.

For a complete list of programs for Ontario farmers see *Programs and Services for Ontario Farmers*, Order No. 08-037.

TAX MANAGEMENT

- **Tax Losses** – can be carried back three years, to offset income tax paid in the three previous years, which could result in a refund. Talk to a tax advisor to see if this would be useful.

SECTION 3: GETTING FINANCIAL ADVICE

To make informed financial decisions, however difficult, it is important to know your businesses current financial status and consider its long-term viability. Can the business, in its current form, continue to operate, and what changes can, if necessary, be made to enable the business to continue?

A key component in answering these questions is determining your equity position and your cost of production.

Why is equity important?

Your equity position determines the businesses' ability to survive a downturn. Over time, cash flow shortages reduce owner's equity. If you know your equity position you can pre-determine the minimum level of equity that you wish to maintain in the business. This is important because the equity in the farm business represents the retirement savings for many farmers. It is important to protect that investment. You may, for example, decide that you will not let your equity fall below a certain amount, say $300,000. If you know your current equity position and the projected cash shortfall, then you can calculate if you are at risk of falling below that amount and make decisions accordingly.

The OMAFRA Factsheet *Diagnosing and Managing Cash Flow Problems*, (Order No. 06-085) explains how to analyse cash flow problems.

WHERE DO I GET ADVICE?

Canadian Farm Business Advisory Service

The Canadian Farm Business Advisory Service (CFBAS) is available to help with financial analysis. This service provides the following:

1. Farm Business Assessment
2. Specialized Business Planning
3. Planning and Assessment for Value-Added Enterprise

1. Farm Business Assessment

Under this program, producers can receive a total of five days of planning expertise from a private sector financial planner for a nominal fee of $100. The program is intended to help you both better understand and document your current business situation as well as develop a basic action plan to move forward. Qualified professionals provide the following:

Farm Financial Assessment:

- up to three days of consultation, at least one day of which would be spent on the farm
- a business profile and financial statements
- a farm business ratio analysis
- an income and expense statement for the previous three years
- a review of opportunities, goals and options

Action Plan:

- up to two days of consultation to review chosen option and goals, and assess the impact of changes
- financial planning, including cash flows and ratio analysis
- strategies
- financial projections of chosen option
- a written report

2. Specialized Business Planning Services

The Specialized Business Planning Services component is available to farmers who require a more specialized business plan for a specific business activity. This program offers a 50 per cent rebate to a maximum of $8,000 of government assistance to purchase specialized consulting services to assist in planning for succession, expansion, marketing, diversification, etc. The farmer chooses and hires the consultant service based on identified needs.

3. Planning and Assessment for Value-Added Enterprise (PAVE)

The Planning and Assessment for Value-Added Enterprises (PAVE) program is available for producers who are considering establishing or expanding a value-added enterprise.

This program offers a 50 per cent rebate, to a maximum of $10,000 of government assistance, (higher limits for group applications) for a feasibility assessment or the development of a business plan.

Who is Eligible for CFBAS and PAVE?

The services are available to all farmers with gross farm incomes of at least $10,000 per year. There are also special provisions for beginning farmers to qualify.

Contact:

Canadian AgriRenewal Services
174 Stone Road West
Guelph, Ontario N1G 4T1
Telephone: **1-866-452-5558** or (519) 763-8135
Fax: (519) 836-3213
Or visit: *www.agr.gc.ca/renewal*
In Northern Ontario call **1-800-461-6132**

LEGAL AND ACCOUNTING ADVICE

Legal and accounting advice is important when considering alternatives. Your accountant can advise on the tax consequences of selling certain assets. A lawyer can advise on the implications of various security arrangements and the legal steps to ensure a title is transferred or debt obligations discharged.

The OMAFRA Factsheets entitled *Taxation on the Sale of Farm Business Assets*, (Order No. 03-021), and *A Guide to Agricultural Security Agreements*, (Order No. 03-069) provide an overview of the tax implications of selling farm assets and legal issues regarding security agreements.

Copies are available through ServiceOntario Publications by calling 1-800-668-9938 or online at www.publications.serviceontario.ca.

A list of other OMAFRA business Factsheets can be found in Section 6 of this Factsheet.

SECTION 4: NEGOTIATING FINANCIAL SETTLEMENTS

Farm businesses that have encountered financial difficulty and wish to continue farming can seek to negotiate a settlement with their creditors. They can do this privately or through the Farm Debt Mediation Service, provided by Agriculture and Agri-Food Canada.

FARM DEBT MEDIATION SERVICE

The Farm Debt Mediation Service (FDMS) is an Agriculture and Agri-Food Canada program providing insolvent farmers and their creditors with mediation services to help them arrive at a mutually satisfactory arrangement.

The service is a private, confidential and a less expensive alternative to the process of resolving insolvency disputes in the courts. Past experience indicates that in 70 per cent of cases farmers and their creditors are able to work out a plan.

Contact:
Farm Debt Mediation Service
Agriculture and Agri-Food Canada
174 Stone Road West
Guelph, Ontario N1G 4T1
Tel: **1-866-452-5556** or 519-836-8135
Fax: (519) 836-3213
www.agr.gc.ca/progser/fdms_e.phtml

Program Description

There are two options for a farmer who wants to use the Farm Debt Mediation Service:

1. The **Stay of Proceedings, Review and Mediation**
2. The **Review and Mediation without a Stay**

The difference between these two processes is the application of the Stay of Proceedings under the first option. The Stay of Proceedings is a very important feature where creditors have already begun legal actions against you.

Steps in the Farm Debt Mediation Process

The steps for both options are the same except for the application of the stay. Once the administrator confirms eligibility:

- a financial expert is assigned to conduct a detailed review of the farmer's financial affairs. The expert may also help the farmer prepare a recovery plan outlining what the farmer proposes to do to resolve their financial difficulty
- the administrator appoints a mediator to meet with the farmer and his or her creditors
- if the farmer has applied for a stay, the meeting would include all creditors.

In applications **without** a stay, the meeting includes all secured creditors and any other creditors who need to be involved in reaching a settlement. With the assistance of the mediator, the farmer and creditors discuss and possibly amend the recovery plan. If an agreement is reached, the settlement is put into writing and, when signed by all the parties, becomes a binding contract.

What is a Stay of Proceedings?

Secured creditors are required by law to serve farmers with **a Notice of Intent to Realize on Security** before undertaking any action to recover debts. A farmer has *15 business days* to respond to this notice before legal action begins. A farmer can, at that point, choose to apply for the stay of proceedings to prevent further action by the creditor. **However, legal advice should be received as to the best time to exercise the stay of proceedings and to clarify the farmer's situation with respect to legal proceedings that have already begun**.

The farmer could also apply for a stay when being sued for a debt by an unsecured creditor. Though **unsecured creditors** are not required to provide the notice, the stay still protects the farmer's assets during mediation. The initial stay of proceedings is for 30 days, but can be extended to a maximum of 120 days.

If a notice has not been served and legal action has not been taken, the farmer may prefer to apply for review and mediation only, without applying for a stay.

Who is Eligible?

Individuals, corporations, partnerships, co-operatives or other associations of persons "engaged in farming for commercial purposes" who are insolvent are eligible for debt mediation.

To be considered insolvent, applicants must meet **one** of the following criteria: Either the applicant:

- is unable to meet their obligations as they generally come due
- has ceased paying their current obligations in the ordinary course of business as they generally become due, or

- the value of their property, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all their obligations, due and accruing due.

Farm businesses that farm using a corporate or partnership structure should seek legal advice on how to proceed with the Farm Debt Mediation process. This is because corporate and partnership farms can be "petitioned into bankruptcy" by creditors if they show creditors the business is insolvent.

SECTION 5: PLANNING AN EXIT FROM FARMING

The decision to make a career change and leave agriculture is never easy. If your farm business has experienced significant losses you may decide to prevent the loss of more farm equity by leaving farming. This section looks at some of the issues around planning an exit from agriculture.

The exit process is discussed under several headings:

1. A Voluntary Exit
2. Bankruptcy
3. A Forced Exit
4. Implications of Loan Guarantees

1. A VOLUNTARY EXIT

When the warning signals of financial difficulty appear, some may voluntarily exist farming. A planned departure has its advantages. It allows for the sale of assets at the best time, reduces the stress of uncertainty on the family and provides more time for owners to plan a career change. A number of options are available.

Planned Sale of Assets

If sufficient equity remains, a planned sale of assets makes sense. With cooperation from lenders and proper tax and legal advice, the most capital can be salvaged. Debts can be paid and legally discharged. Farmers should obtain advice on the timing of the sale, along with the taxes payable, from an accountant.

Bankruptcy

Whenever possible a negotiated settlement with creditors is preferred. However, if an agreement cannot be reached then consider bankruptcy. This ensures you are released completely from any unmanageable debt and will prevent future pursuit by creditors. See Part 2, Bankruptcy, below for more information.

Can You Walk Away from the Business?

You can walk away from a business, but it is unlikely that this would be the best option. A **quit claim deed** is an instrument used to turn over the title of a property to a lender. It is most often associated with a negotiated settlement where little or no equity remains. Lenders may insist upon foreclosure or power of sale action as an alternative to a quit claim deed. Although it can be used to turn real property over to a lender, there still may be tax liabilities to be concerned with and other creditors who want payment. It would best be used as part of a negotiated settlement involving all creditors.

2. BANKRUPTCY

Bankruptcy, while unpalatable, is an option for farmers with unmanageable debt, little or no equity remaining, and no agreement with their creditors. It is a legal process that releases a debtor from his or her unsecured debts and divides up assets amongst creditors. Secured creditors have the right to seize those properties to which they have valid security agreements on. See Part 3, A Forced Exit, below for more information.

Bankruptcy may be voluntary or forced.

Voluntary Bankruptcy

Any business or individual may voluntarily declare bankruptcy. This is called "an assignment into bankruptcy". An individual may take this step at any time. Once bankruptcy is declared, there is a stay of proceedings on any recent or new actions taken by creditors to recover debt. However, secured creditors who have already taken possession of assets or who commenced proceedings to do so at least 10 days prior to the filing for bankruptcy, are exempt from the stay of proceedings.

Forced Bankruptcy

A farmer whose principal occupation is farming and who is farming as a sole proprietorship **cannot** be forced into bankruptcy by a lender. However a partnership or corporation **can** be forced into bankruptcy. In these cases a creditor can petition the court to place the business into bankruptcy. An individual who incurred the debt while in a partnership that is now dissolved can also be petitioned into bankruptcy.

The Bankruptcy Process

What follows is an outline of the steps in the bankruptcy process. Apart from the initial step, voluntary and forced bankruptcy proceedings are the same.

Individuals who assign themselves into bankruptcy contact a Trustee in Bankruptcy and file the appropriate papers. In a forced bankruptcy, the court appoints a trustee.

Once bankruptcy is declared your creditors must deal with the trustee regarding all the unsecured debts. Secured creditors maintain their rights over property that they have valid security agreements against. In most cases if the secured assets have equity value they must be sold and converted to cash, even if the lender would have allowed you to continue making the payments.

Not all assets must be turned over to your trustee. Ontario's *Execution Act* allows the bankrupt person to maintain some personal and household items along with their tools of the trade. In the case of farmers this includes:

- personal and family clothing not exceeding $5,650 in value
- household furniture, food and fuel not exceeding $11,300 in value
- livestock, fowl, bees, books, tools and implements and other chattels used in farming not exceeding $28,300 in value
- a motor vehicle not exceeding $5,650 in value
- sufficient seed to seed all the person's land under cultivation, not exceeding 100 acres, as selected by the debtor, and 14 bushels of potatoes, and, where seizure is made between the 1st day of October and the 30th day of April, such food and bedding as are necessary to feed and bed the livestock and fowl that are exempt under this section until the 30th day of April next following

RRSP Exemptions

Recent amendments to the *Federal Bankruptcy and Insolvency Act* have also made amounts held in RRSPs exempt from seizure in bankruptcy, subject to a possible claw back for contributions made in the 12 months preceding bankruptcy. Where provincial legislation exempts RRSPs from execution, the provincial legislation will apply. Where provincial legislation is silent regarding the treatment of RRSPs, they are exempt subject to the claw back referred to above.

What Does the Trustee Do?

The debtor must:

- turn over all of their assets to a trustee
- provide the trustee with all financial records
- disclose all liabilities, and
- provide details of recently disposed assets

The trustee becomes a steward of the assets. The debtor must work closely with the trustee, gain clearance for any payments, let the trustee know where they are living and working, not acquire more debts, turn over any gifts, inheritances or windfalls, etc.

Creditors

The trustee and debtor may meet with the creditors to disclose the financial situation.

As assets are sold, creditors will receive a percentage of the proceeds. Since Revenue Canada is an unsecured creditor, bankruptcy removes all tax liabilities, except where the personal tax debt is in excess of $200,000 and represents 75 per cent or more of the total unsecured debt.

Debts Not Erased

The following debts are not erased by bankruptcy:

- secured debts (a secured debt is any loan attached to, or secured by, an asset)
- support payments for a child or spouse
- fines or penalties imposed by a court
- debts obtained by fraudulent means
- student loans (up to seven years previous)

Bankruptcy Discharge

The process of releasing a person from their obligation to pay unsecured debts is called a discharge. There is an automatic discharge for first-time bankrupts nine months after they become bankrupt. This occurs unless the trustee recommends a discharge with conditions or if a creditor or the trustee of the Superintendent of Bankruptcy opposes it.

Moving Forward

Bankruptcy in itself is stressful. Although most farmers consider it only as a last resort, its purpose is to relieve honest debtors from financial situations that have become unmanageable. This relief can, in turn, allow them to move forward and pursue other career paths and opportunities.

> **The Trustee**
>
> A trustee, usually associated with a chartered accounting firm, may be found in the yellow pages of the telephone directory or by contacting **The Office of the Superintendent of Bankruptcy at (416) 973-6486.** Your accountant or lawyer can usually recommend a trustee.
>
> If a potential bankrupt person has no funds, the Superintendent of Bankruptcy can help you obtain a trustee through the **Bankruptcy Assistance Program (B.A.P.).**

COMPANIES' CREDITORS ARRANGEMENT ACT (CCAA)

The *Companies' Creditors Arrangement Act* is a federal act that allows corporations in financial difficulty to restructure their affairs. Companies wishing the protection of the act must apply through the courts for a stay of proceedings. The CCAA is only available to corporations that owe their creditors more than $5 million dollars.

The company presents a "Plan of Arrangement" to its creditors explaining how it intends to deals with the debt. If the creditors do not agree with the plan, the stay of proceedings is lifted and bankruptcy or receivership may follow.

3. A FORCED EXIT

When a borrower provides security to a lender, he or she gives the lender an "interest in" or certain rights in the secured property. This interest remains until the loan is paid off and the security document is discharged.

If a borrower fails to live up to the terms of the loan agreement, legal action may be taken to satisfy the debt. Even after action occurs an orderly and gradual sale of assets can still be negotiated. As long as the creditor does not believe the security is in jeopardy a planned sale will likely return the greatest amount to both the lender and borrower.

A lender is able to take a variety of legal actions if a borrower defaults on a loan.

Land Mortgages

Foreclosure

Mortgage Foreclosure is a court-supervised action the lender may choose when the borrower is in default under the land mortgage agreement. By foreclosing on the mortgage the lender takes possession and title to the land. If the lender sells the land for more than the amount owing on the mortgage, the lender keeps the difference. If the property sells for less than the debt, the lender cannot sue the borrower for the shortfall.

Power of Sale

Power of Sale is another way for lenders to recover their debt on land when the borrower is in default under the land mortgage agreement (often referred to as "realizing on the land"). The mortgage contract gives the lender the right to sell the land, but **not** title to the land. If the land sells for more than the amount of the debt, the surplus goes to the borrower unless another creditor is entitled to it ahead of the borrower. If the land sells for less than the amount of the debt, the lender can sue the borrower for the difference.

Action for Security on Personal Property

Personal property is assets other than real estate.

Realization of Security describes the action taken against the borrower's property under the *Bank Act* or the provincial *Personal Property Security Act* (PPSA). Under the realization process, the lender normally demands payment. When payment is not made the secured assets can be seized and either sold to reduce the debt (in which case the lender can usually also sue to recover any shortfall) or kept as payment of the debt.

> **Before realizing on PPSA security, a secured party must give notice and then wait 15 business days under section 21 of the *Farm Debt Mediation Act*.**

Receivership Procedure

Some security agreements allow the lender to appoint a private receiver or receiver-manager when the loan is in default. The receiver works for the lender, but the borrower pays the fees.

In some cases lenders may ask the court to appoint a receiver. A court-appointed receiver gets all instructions from the court and must consider the interests of all creditors, not just the one who requested the appointment.

The receiver can carry on business and apply profits to reduce debt, sell the business, or wind down the business and sell assets separately. During a receivership it is possible the business can be adjusted and parts salvaged. Normally though a business is wound down during receivership and the assets are sold to pay debts.

4. IMPLICATIONS OF LOAN GUARANTEES

A guarantee is an agreement between a lender and an individual (called a guarantor) where the guarantor promises to pay the money a particular borrower owes the lender if the borrower defaults on the debt. The guarantee may also give the lender security over some or all of the property of the person providing the guarantee.

Most guarantees do not require a lender to first pursue the debtor or other individuals who have given guarantees. This means a lender can collect from the guarantor without ever attempting to do so from the borrower who defaulted on the loan. If this occurs the only recourse for the guarantor is to collect from the borrower they signed the guarantee for. In that situation the guarantor has now become a creditor to the person who defaulted on the loan. They can, in some cases, take over the lender's security and attempt to realize on it in order to recover their money. It is usually safe to assume however, that if realizing on security had been a reasonable method for recovering the debt, the lender would have pursued it.

If a government agency has guaranteed a loan as part of a program and the borrower defaults, the government could then become a creditor.

These debts owed to guarantors must be dealt with in the same manner as any other creditor.

If the borrower exits from farming and does not declare bankruptcy, the guarantor must be contacted and a deal struck to liquidate the guarantee. If no equity remains the guarantor may write off the guaranteed amount. If the borrower fails to contact the guarantor, he or she may face legal actions from the guarantor. A bankrupt party must list the guarantor as a creditor when working with the Trustee in Bankruptcy. The guarantor will accept the proportion of the guarantee that can be realized from the liquidation of assets.

Limited or Unlimited Guarantees

A guarantee may be **limited** or **unlimited**. An unlimited guarantee might have wording that states the guarantee is responsible for all present and future debts of the debtor. The wording may also be broad enough to allow the lender to change the terms and amounts of the original loan without needing the consent of the guarantor.

A limited guarantee would state how much the guarantor would owe the lender in the event of a default.

REFERENCES

Financial Stress — Legal Issues, G. Edward Oldfield, Law Firm of Hobson, Wellhauser, Taylor & Oldfield, Waterloo, prepared for the 1999 Farm Tax and Business Seminar.

Legal Aspects of Farm Finance, OMAFRA publication written by Lynn Paul, Barrister and Solicitor, Hamilton.

SECTION 6: OTHER SOURCES OF INFORMATION

All OMAFRA products and information are available through ServiceOntario Publications at 1-800-668-9938 or the OMAFRA website, www.ontario.ca/omafra.

Ontario Farm Management Analysis Project (OFMAP) and computer spreadsheets www.ontario.ca/omafra.

Ontario Enterprise Budgets for Crop and Livestock Enterprises. www.ontario.ca/omafra.

Farm Management Computer Tools, including a loan calculator and capital investment analyser.

Publication 37, *Farm Financial Analysis and Planning Workbook*, Ontario Ministry of Agriculture and Food www.ontario.ca/omafra.

Other OMAFRA Business Factsheets

A Guide to Agricultural Security Agreements, Order No. 03-069

Budgeting Farm Machinery Costs, Order No. 01-075

Canada Pension Plan, Order No. 06-065

Cash Lease Agreements for Cropland, Order No. 01-071

Crop Share Lease Agreements, Order No. 01-067

Farm Corporations, Order No. 01-057

Farm Partnerships, Order No. 02-047

Flexible Cash Lease Agreements, Order No. 01-069

Land Lease Arrangements, Order No. 01-065

Lease Agreements for Farm Buildings, Order No. 03-095

Leasing Farm Equipment, Order No. 01-003

Pasture Lease Agreements, Order No. 03-091

Programs and Services for Ontario Farmers, Order No. 07-021

Taxation on the Sale of Farm Business Assets, Order No. 03-021

Diagnosing and Managing Cash Flow Problems, Order No. 06-085

Taxation on the Transfer of Farm Business Assets to Family Members, Order No. 03-023

Blank Lease Forms

Cash Lease for Cropland, Order No. 03-097

Crop Share Lease, Order No. 03-101

Farm Building Lease, Order No. 03-093

Flexible Cash Lease for Cropland, Order No. 03-099

Pasture Lease, Order No. 03-089

SECTION 7: LEGAL AND FINANCIAL TERMS

accrual statement — a financial statement which matches expenses incurred and income earned for a specific time period, although these expenses and income may not have been actually paid or received in cash within that time period.

assign — to transfer to someone else.

assignment of account — transfer to assignee giving the assignee the right to apply collected proceeds against an outstanding debt.

bailiff — a public officer whose job is to collect judgment debts; sheriff.

book value of assets — the value of an asset at the date it was acquired as reported on financial statements prepared using generally accepted accounting principles.

capitalization of interest — the process in which interest arrears are consolidated into the principal amount; similar to compounded interest.

cash flow statement — a financial statement showing the net effect on cash of the inflows and outflows of cash from operations and other types of transactions over a given period of time.

cash statement — a statement showing the opening and closing balances of cash on hand in the bank, summarizing the cash received and money paid out for a stat period.

chattel mortgage — a charge or lien on personal property, typically used for the purchase of equipment.

collateral — property charged or pledged to ensure that the terms of a contract are met or the payment of a debt is made.

consignment — a shipment of goods made under an agreement whereby the receiver (the consignee) agrees to sell or otherwise dispose of the goods as agent on behalf of the shipper (the consignor).

debt restructuring — a change in the repayment terms of a loan agreement.

debt servicing — the ability to make payments of money owned.

default — a person is "in default" or "defaults" by not doing something as promised in the agreement (like making a payment) or doing something s/he promised in the agreement not to do (like selling some property without a creditor's permission) or when some other thing happens which the agreement said would be a default (like a sheriff seizing some of the person's property).

demand note — an agreement between the creditor and the debtor that the creditor can demand payment of the money owed at any time.

encumbrance — an encumbrance is an interest one person (the "encumbrancer") has in another person's property. The interest may be a security like a mortgage on land) or it may be another sort of interest, such as the lien the garage has on a tractor for the cost of repairing it.

garnishment —an action whereby a person's wages or some other money coming to that person is withheld from the person and applied to debt. This action must be authorized by a court order.

general security agreement —a financial contract between a debtor and a creditor in which personal property of the debtor is provided as security for repayment of a debt.

insolvency —the condition of a person who is unable to pay his debts as they become due.

lien — the right given by law or contract to a person to have a debt repaid out of the property belonging to the person owing the debt.

liquidation value — the price that might be expected to be realized on an asset upon a forced sale or on the winding up of the business.

Ontario Personal Property Security Act (PPSA) — this Act sets out the law governing contracts in which personal property is provided as security for repayment of debts.

person — person generally means not just individuals, but also corporations, partnerships, associations, and other entities.

purchase money security interest (PMSI) — a special type of security interest under the PPSA, when a loan agreement is taken for the purchase of an item of personal property, and is secured by that item being purchased .

promissory note — a written promise to pay a certain sum at a particular time, or on demand.

property — property is anything that a person can own. Property is either real property or personal property

real property — real property is land and things that the law says become part of it once they are put there, such as most buildings, trees, and some crops. For example, Revenue Canada defines it to include buildings in the definition of qualified farm property that is eligible for the $500,000 capital gains exemption.

realize — when a debtor is in default, a secured creditor may recover some of the loss that default cost by realizing, meaning to turn into cash, by selling or keeping, the debtor's property covered by the security agreement.

receivership —the legal status of a debtor for whom a receiver has been appointed.

search of title —an examination (at the registry office or land titles office) of the official books and documents relating to land for the purpose of discovering if there are any encumbrances registered against it, and/or to ascertain the title holder(s) of the property.

security — security is an interest in a debtor's property that the debtor gives to a creditor to protect the creditor from loss if there is a default by the debtor.

sheriff —a public officer whose function is to collect on judgment debts; bailiff.

solvency —the ability of a person to pay debts as they become due.

statement of adjustments —a statement prepared at the time land is sold which reflects any addition or subtraction to be made to or from the purchase price as agreed by contract (i.e. credit for taxes paid).

statement of realization and liquidation —a financial statement drawn up by a trustee or liquidator to account for the winding up of a business, showing the amounts received on the sale of the assets and the amounts given out to liquidate the liabilities.

transfer deed —a document that conveys land; a document signed by the owner whereby title to land is transferred to another person.

trustee — a person who holds title to property for the benefit of another.

trustee in bankruptcy —a person appointed by the court to administer the estate of a bankrupt and distribute available assets to creditors.

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